

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**WILLIAM ROBINSON,**

**Plaintiff,**

**v.**

**FRANK JONES, et. al.,**

**Defendants.**

**CIVIL ACTION FILE**

**NO. 1:18-C-2350-MHC**

**ORDER**

Plaintiff, initially proceeding *pro se*, instituted this action suing several officials at the Fulton County Jail and raising a variety of claims. After a frivolity review, this Court permitted Plaintiff's claims for money damages for excessive force and conspiracy against Defendants Veronica Mims, Refferty Fuqua, "FCCO Doe," Frank Jones, Robert Saunders and Markennis Jackson to proceed. Order of Aug. 10, 2018 [Doc. 7]. After service of the complaint, Defendant Fuqua filed a motion to dismiss [Doc. 31], and soon thereafter Plaintiff was able to secure legal counsel who filed an amended, superseding complaint that named only Jones, Saunders, and Jackson as defendants. Plaintiff also filed a response to Fuqua's motion to dismiss [Doc. 38] in which he states that, because the amended

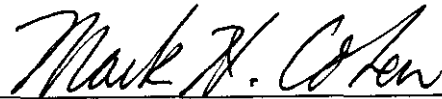
complaint fails to name Fuqua as a defendant, the motion to dismiss is moot and that Fuqua should be dismissed without prejudice.

Magistrate Judge Justin S. Anand has issued his Non-Final Report and Recommendation [Doc. 45] (“R&R”) in which he recommends granting the motion to dismiss because Plaintiff does not oppose Fuqua’s dismissal. In response to the R&R, Fuqua filed objections [Doc. 48] in which he argues that his dismissal should be with prejudice under Fed. R. Civ. P. 41. Plaintiff responded to Fuqua’s objections [Doc. 49] disputing Fuqua’s arguments and asserting that dismissal without prejudice is proper. Plaintiff further states that he does not now intend to raise any claims against Fuqua, but he might later decide to based on what he learns during discovery.

Because it may not happen, this Court concludes that there is no reason to determine at this time whether Plaintiff would be permitted to raise claims against Fuqua in the future. Accordingly, the R&R [Doc. 45] is hereby **ADOPTED** as the order of this Court, Defendant Fuqua’s motion to dismiss [Doc. 31] is **GRANTED**, and Fuqua is **DISMISSED** without prejudice. Should Plaintiff purport to raise claims against Fuqua in the future, Fuqua will be permitted to assert his Rule 41 argument at that time. Because they are not named in the amended complaint, Mims and FCCO Doe are likewise **DISMISSED** without prejudice.

The Clerk is **DIRECTED** to resubmit this matter to Magistrate Judge Anand for further proceedings.

**IT IS SO ORDERED** this 29<sup>th</sup> day of April, 2019.

A handwritten signature in black ink, reading "Mark H. Cohen", written over a horizontal line.

MARK H. COHEN

United States District Judge